

**REPORT - PLANNING COMMISSION MEETING**  
**July 22, 2004**

**Project Name and Number:** Hill Area General Plan Land Use Map Changes and Corresponding Rezoning (PLN2004-00030)

**Applicant:** City of Fremont

**Proposal:** Amend the General Plan Land Use Map as required by the Hill Area Initiative of 2002 (Measure T) by refining the location of the Toe of the Hill that delineates the westerly boundary of the Hill Area and make conforming changes to the land use designations along and above the Toe of the Hill line; the rezoning of properties as follows: (1) within the Hill Area of Fremont by deleting the Development Reserve Overlay (R) district from zoning maps; (2) changing certain properties within the Hill Area from Single Family Residential (R-1-80 and R-1-160) to Hill Open Space (O-S) district to reflect changes in the alignment of the Toe of the Hill; (3) changing all or portions of properties located above the Toe of the Hill from Single Family Residential (R-1) and Agricultural (A) to Hill Face and Hill Open Space (O-S) districts; and (4) changing all or portions of properties located below the Toe of the Hill from Hill Face Open Space (O-S) district to Single Family Residential (R-1) or other adjoining compatible zoning district to reflect changes in the alignment of the Toe of the Hill line, to achieve conformance with the General Plan.

**Recommended Action:** Recommend to City Council.

**Location:** Along and above the proposed Toe of the Hill.

**Area:** Approximately 10,950 acres.

**Assessor's Parcel No(s):** Various

**Owners:** Various

**Agent of Applicant:** None

**Consultant(s):** None

**Environmental Review:** A Draft Negative Declaration has been prepared and circulated for this item.

**Existing General Plan:** Hill Face Open Space, Hill Open Space, Institutional Open Space, Private Open Space and Residential Very Low Density.

**Existing Zoning:** Development Reserve Overlay (R), various Single Family Residential Districts (R-1), Planned Districts (P), Agriculture (A) and Institutional, Private, Hill and Hill Face Open Space Districts (O-S), Thoroughfare Commercial-Historic Overlay (C-T(H)), Public Facility (P-F) and Hillside Combining (H-I) Districts.

**Existing Land Use:** Residential, agricultural, open space, public facility

**Public Hearing Notice:** Public hearing notification is applicable. A total of 786 notices were mailed to interested parties and to owners and occupants of property along and above the proposed Toe of the Hill line from Union City to the Milpitas city limits. The notices to owners and occupants were mailed on June 11, 2004. A Public Hearing Notice was delivered to The Argus on June 2, 2004 to be published by June 10, 2004. A one-quarter (1/4)-page display advertisement was delivered to The Argus on June 2, 2004, to be published by June 10, 2004.

In addition, on July 1, 2004, a courtesy notice was sent out to the same parties noted above to inform them that the Planning Commission would consider this item on July 22, 2004. A Public Hearing Notice was delivered to the Argus on July 2, 2004 to be published by July 8, 2004. A one-eighth (1/8)-page display advertisement was delivered to The Argus on July 2, 2004 to be published by July 8, 2004.

In addition, a Notice of Preparation of a Draft Negative Declaration was delivered to The Argus on June 7, 2004 to be published on June 11, 2004.

**Executive Summary:** Three rezoning actions are proposed to be in conformance with the General Plan as amended by the electorate through passage of Measure T, the 2002 Hill Area Initiative ("Hill Initiative") on November 5, 2002. These rezonings are required based on the Hill Initiative's definition and relocation of the Toe of the Hill ("TOH") line. All property located east of the TOH line has to be redesignated within the General Plan as Hill Area and conforming rezoning is necessary, except for Planned Districts (PD) which will remain zoned as Planned District.

The first rezoning would remove the Development Reserve Overlay district. The overlay was originally established to assure city services would be available prior to residential development in the higher reaches of the hills. Until it could be demonstrated that acceptable services would be available, the minimum parcel size was set at 20 acres. The Hill Initiative, in general, modified the minimum size of new parcels within the Hill Area to be 20 acres (100 acres being the minimum size for new parcels for land annexed to City after January 1, 2002), except when clustered to meet performance standards that preserve open space lands and minimize visual and environmental impacts. Thus, the zoning designation of Development Reserve Overlay is unnecessary, given that the minimum new parcel size is now reflected for properties above the Hill Initiative's TOH line. The proposed removal of the Development Reserve Overlay zoning district is based on State law, which requires that zoning of property must be consistent with the General Plan.

For properties below the proposed Toe of the Hill line but still above the Development Reserve service line, staff proposes zoning text amendments to the Hillside Combining (H-I) district to address service levels and development criteria. These amendments are included with the companion item PLN2004-00029. (Item 1 of this agenda.)

The second rezoning action proposes to rezone two residential districts from Single Family Residential (R-1-160) (Niles hills northwesterly of the mouth of Niles Canyon) and Single Family Residential (R-1-80) (Vargas Road area) to Hill Open Space (O-S). The rezoning is required to be consistent with the Initiative. Approximately 22 parcels are affected by this action.

A third rezoning affects properties at the westerly edge of the Hill Area as designated on the General Plan. The TOH line that establishes the westerly boundary of the Hill Area has been recently redrawn to conform to the definition of the TOH line in the Hill Initiative. The affected parcels are now within the Hill Area and need to be rezoned to Open Space, or, alternatively, are now outside of the Hill Area and need to be rezoned predominately as residential.

Planned Districts will retain their zoning designations but Initiative regulations affecting properties within Planned Districts have been proposed for incorporation into the Planned District regulations section of the Fremont Municipal Code. This report suggests the Planning Commission recommend approval of a Negative Declaration and a rezoning of the subject properties.

#### **Background and Previous Actions:**

In November 1981, voters approved the Hill Area of 1981, a citizen-sponsored initiative restricting development in the Fremont hills. The provisions of that initiative, Measure A, were incorporated into the General Plan, Zoning Ordinance and development policies in 1982 and in 1991 as part of comprehensive revisions to the General Plan. In November 2002, the voters of Fremont passed the citizen-sponsored Hill Area Initiative (Measure T), further modifying the City's hill area policies contained in the General Plan. The 2002 Hill Area Initiative requires amendments to the General Plan Land Use Maps, Zoning Ordinance and the Hill Area Development Policy to be consistent with the General Plan text adopted by the voters. These changes are the subject of this report. The Zoning Ordinance and development policy changes are the subjects of a separate report (Item 1 of this agenda).

On June 24, 2004, the Planning Commission continued this item to July 22, 2004 to give time for staff to evaluate comments and questions received from the public. Responses to these comments and questions have been prepared by staff and are presented as Informational Exhibit 3.

**Project Description:** Amend the General Plan Land Use Map by refining the location of the Toe of the Hill ("TOH") line based on the new definition from the Hill Area Initiative of 2002 (Measure T) that delineates the westerly boundary of the Hill Area and make conforming changes to the land use designations along and above the Toe of the Hill line. A corresponding rezoning of properties along and above the Toe of the Hill line is also proposed. The rezoning portion of this project: (1) deletes the Development Reserve Overlay (R) district from the zoning maps; (2) reclassifies properties within the Hill Area from Single Family Residential (R-1-80 and R-1-160) to Hill Open Space (O-S); (3) rezones all or portions of properties located above the Toe of the Hill from Single Family Residential (R-1) and Agricultural (A) to Hill Face and Hill Open Space (O-S) districts; and (4) rezones all or portions of properties located below the Toe of the Hill line from Hill Face Open Space (O-S) district to Single Family Residential (R-1) or other adjoining compatible zoning district to reflect changes in the alignment of the Toe of the Hill line and to achieve conformance with the General Plan, except for Planned Districts (PD) which will retain their Planned District zoning designation.

**Project Analysis:**

Delineating the Toe of the Hill: Based on the 1981 Hillside Initiative (Measure A), the 1991 General Plan defined the Hill Area as the area generally easterly of a line along 680 and Mission Boulevard.

The Hill Area Initiative of 2002 ("Hill Area Initiative") included a new definition of the Toe of the Hill (TOH) line and also relocated the westerly boundary of the Hill Area to the TOH line, with the Hill Area extending easterly from the TOH line to the City boundary line. In Measure T, the TOH line is defined as "a line along the base of the hills where the **natural grade first becomes** twenty percent or more..." (emphasis added). Based on the Measure T definition and the topographic contour lines generated by the City's Geographic Information System (GIS) consultant, City staff generated a proposed TOH line, and presented this proposal at study sessions with the City Council on February 17, 2004, and with the Planning Commission on May 13, 2004. This proposed TOH line addresses the topographic complexities of the Fremont hills by adhering to a set of principles to ensure that the TOH line remains "a [single] line" as required by Measure T, as follows:

- The TOH line shall be a continuous line. The slope shall be measured perpendicular to elevation contours as established from a survey of the natural topography.
- Where the first twenty percent line at the base of the hills is discontinuous, the TOH line shall be drawn along the boundary of the twenty percent slope area to create a continuous line.
- Where the twenty percent line creates pockets or projections narrower than one hundred feet, the TOH line is drawn across the pocket or projection.

Note that the principles proposed above are set forth as a proposed zoning text amendment to revise the zoning text definition of Toe of the Hill line (PLN2004-00029). In fact, when Measure A had been adopted in 1981, the City Council subsequently adopted principles for drawing the Measure A TOH line in a 1993 ordinance further defining the TOH line. The proposed principles for establishing the Measure T TOH line would similarly be codified as a definition in the Municipal Code.

Modifications to the Toe of the Hill Line: Individual property owners have approached City staff to propose modifications to the location of the TOH line in relation to their property. While still proceeding with the adoption of the proposed TOH line, the Zoning Text Amendment proposes to include a provision within the TOH line definition, Section 8-2199.8(4), which will allow property owners to submit information and data, prepared by a professional civil engineer or professional land surveyor, which supports their proposed relocation of the TOH line. The information and data would be submitted to the Planning Division, and subject to City review, including professional peer review. Any revision to the adopted TOH line would be subject to a public hearing at which all interested persons will have the opportunity to review the information and participate. Furthermore, any proposed relocation must otherwise be consistent with the Hill Area Initiative of 2002, and all the ordinances and resolutions adopted to implement the Initiative. If the proposed relocation of the TOH line

changes the development potential of any property, not limited to the applicant's property, a General Plan Amendment and Zoning Atlas amendment shall be required to implement the change. Since changes to the TOH line may also impact properties surrounding the applicant's property, because revisions to the TOH line may not result in a discontinuous or "broken" line, a public hearing process is proposed for any applications for a relocation of the TOH line.

Use of Natural Grade: Measure T's definition of the Toe of the Hill line references "where the natural grade first becomes twenty percent or more". Staff has determined "natural" to mean "not made, caused by, or processed by humankind".(Oxford Dictionary 1999) Staff began its delineation of the TOH line based on the Hill Area Initiative's definition by having a consultant digitize 2002 topographic aerial photos of Fremont. With the digitized 2002 topographic aerial photos, 20% slopes were mapped based on 40 foot grids, as the 2002 topographic aerial photo provides a reasonable amount of detail for a 40 foot grid. When verifying the accuracy of the proposed TOH line, City staff was aware of slopes shown on the 2002 topographic digitized aerial photos that were created by human effort, such as grading around a water reservoir or grading to create the freeway. To correct the 2002 topographic aerial photos to properly reflect the "natural" grade, City staff references a 1956 topographic aerial to confirm natural condition and slopes. When the City of Fremont was incorporated as a City in 1956, the City obtained aerial topographic photos of the entire City. 1956 was a time when few portions of the City had been modified by grading, building or other development. Thus, the 1956 topographic aerial is a useful reference to determine if slopes shown in the more current 2002 digitized topographic aerial photos were "made by humankind" and not in their "natural" state.

Modifications to Toe of the Hill Line since last Planning Commission Hearing: City staff has reviewed the draft Toe of the Hill (TOH) and incorporated some minor changes. These changes are consistent with the principles developed to delineate the TOH. In particular, the draft TOH Line has been revised to be consistent with the 100-foot principle in the vicinity of Guadalupe Terrace, Monticello Terrace, and Mission Creek. The revisions are reflected in the zoning atlas pages 584-C-376, 584-C-380, 590-C-376, and 590-C-380. In response to an inquiry from Rosetta Advisors, regarding the former Mission Clay Products site on Old Canyon Road, in the Niles district, staff has reviewed the site topography and compared the 2002 topography with the 1956 aerial topographic maps. During this review staff determined that there were some slopes "made by humankind," and therefore the slope was not in its natural state. As a result, staff is revising the TOH Line on zoning atlas page 578-C-400. At the time this report was printed staff had not finalized the change to zoning atlas page 578-C-400. The revised zoning atlas page for the Mission Clay Products site will be presented at the Planning Commission meeting.

**General Plan/ Zoning Consistency:** On November 5, 2002, the voters of Fremont passed the Hill Initiative (Measure T) modifying the City's hill area policies contained in the General Plan text. The specific changes required by Measure T have been incorporated into the General Plan text by operation of law. Because the changes to the General Plan were adopted by the vote of the people, no further action is required by the Planning Commission or City Council to amend the General Plan text. However, the map contained in the Initiative that showed the Hill Area was for illustrative purposes only, and the actual Hill Area would be subsequently delineated based on the Toe of the Hill line definition in Measure T. The proposed General Plan land use map changes and corresponding rezonings were prepared using the parameters established in the Initiative. Because State law requires the zoning to be consistent with the General Plan, the Planning Commission and City Council must approve amendments to the General Plan Land Use Map and Zoning Ordinance map and text to bring those documents into consistency with the revised General Plan text as required by the Hill Area Initiative. This report also deals with the necessary changes needed to the Land Use zoning maps.

**General Plan Land Use Map and Zoning Map Changes:** The Hill Initiative designates all lands easterly of the redefined TOH line as Hill Face Open Space or Hill Area Open Space and practically eliminated the Development Reserve Overlay zoning designation. In order to bring the General Plan land use map and zoning text and map into consistency with the General Plan text, two types of actions are proposed:

- Removal of the Development Reserve Overlay District;
- Redesignation and rezoning to Open Space of those properties easterly of the redefined Toe of the Hill that are designated and zoned residential, except Planned Districts (PD) which will retain Planned District zoning.

The second category affects properties along the easterly edge of the TOH line. Properties, or portions thereof, now located above the TOH line are now Hill Face Open Space General Plan land use designation as defined by the Hill Area Initiative, but may currently be designated and zoned residential. These properties or portions thereof are proposed to be rezoned Hill Face Open Space (O-S), except Planned Districts (PD) which will remain zoned Planned District.

**Other Land Use Impacts:** Besides the impacts regarding residential development, the Initiative also modified the list of other permitted uses, as more particularly described in the companion item, PLN2004-00029. (Item 1 of this agenda.)

A more detailed analysis of the potential impacts is provided within the Initial Study for the project (included as an enclosure). The initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

This project was submitted to the Alameda County Congestion Management Agency (ACCMA) for review to determine if implementation of the proposal would create an impact on the regional transportation network. No comments were received.

<b>Exhibits:</b>	Exhibit "A"	General Plan Land Use Map Amendments
	Exhibit "B"	Map of Extent of Lands Affected by the 2002 Hill Area Initiative (Measure T)
	Exhibit "C"	Rezoning Maps

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**Recommended Actions:**

1. Hold public hearing.
2. Recommend the City Council find the Initial Study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council approve the Draft Negative Declaration with accompanying certificate of fee exemption and find it reflects the independent judgement of the City of Fremont.
4. Find PLN2004-00030 General Plan Land Use Map Amendment (Exhibit A), is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report and as referenced in the Hill Area Initiative of 2002 (Appendix 2).
5. Recommend the City Council approve amendments to the General Plan land use designations for properties along and above the Toe of the Hill line in conformance with Exhibit "A" (General Plan Land Use Map Amendments).
6. Recommend the City Council adopt Exhibit "B" (Map of Extent of Lands Affected by the 2002 Hill Area Initiative (Measure T)) to be inserted with the General Plan text.
7. Find the Rezoning are in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan Land Use chapter that were enacted by the passage of Measure T (the Hill Area Initiative of 2002) on November 5, 2002.
8. Recommend the City Council introduce an ordinance adopting Exhibit "C" (Rezoning Maps).